



Comptroller General
of the United States

Washington, D.C. 20548

942284

Decision

Matter of: AWM Enterprises, Inc.

File: B-251790

Date: April 30, 1993

Andrew B. Katz, Esq., and Dennis J. Riley, Esq., Elliott, Vanaskie & Riley, for the protester.
Arthur B. Thibodeau, Esq., and Garrett L. Ressing, Esq., Department of the Navy, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest allegation, that the agency's evaluation of the protester's proposal in a negotiated procurement, in which company experience was one of the stated evaluation criteria, was unreasonable and the result of bias against the protester because it is a new business without company experience, is denied where the record shows no evidence of bias and the source selection authority evaluated the protester's proposal as acceptable despite the protester's lack of company experience.

2. Protest allegation that the awardee's low proposed price is unreasonable is denied where the protester, despite having access under a General Accounting Office protective order to the awardee's price proposal and to the agency's detailed price evaluation documentation, provided no substantiation for this allegation, other than noting that the awardee's price was low; the record shows that the agency, in evaluating the awardee's low price, did not find that it indicated a lack of technical understanding; and the agency accounted for the awardee's low price by increasing the awardee's proposal risk assessment from low to moderate.

DECISION

AWM Enterprises, Inc. protests the award of a contract to American Development Corporation (ADCOR) under request for proposals (RFP) No. N47408-92-R-2510, issued by the Naval Facilities Engineering Command, Port Hueneme, California, for non-powered causeways. AWM argues that the evaluation of its proposal was unreasonable and the result of bias

against AWM, and that the Navy failed to evaluate ADCOR's unrealistically low proposed price.

The protest is denied.¹

The RFP, issued as a total small disadvantaged business (SDB) set-aside, contemplated the award of a firm, fixed-price contract for basic and option quantities of non-powered causeway sections to be used in an elevated modular causeway system. The non-powered causeway sections will be fabricated in accordance with government-provided design specifications.

The RFP, as amended, provided that award would be made to that offeror whose proposal was determined to be the best value to the government "in terms of experience, capability and cost" as determined by application of the stated evaluation criteria. Proposed price was stated to be less important than the overall technical evaluation subcriteria, but was more important than any single technical evaluation subcriterion. The following technical evaluation criteria were stated in descending order of importance:

1. Technical and management capabilities to perform the contract work and technical understanding
2. Facilities and equipment
3. Company experience in government contracts of similar size and complexity during the last 5 years
4. Management and staffing capabilities

The RFP informed offerors that proposals would be evaluated adjectivally as follows: a proposal that exceeded the solicitation requirements in a beneficial way with a high probability of success would be evaluated as "outstanding" with low risk to the government; a proposal that satisfied the solicitation requirements with a good probability of success would be evaluated as "acceptable" with moderate risk; a proposal that failed to meet significant solicitation requirements with low probability of success would be evaluated as "marginal" with high risk; and a proposal that failed to meet significant requirements with no reasonable likelihood of success would be evaluated as "unacceptable"

¹Portions of the protest record are subject to a General Accounting Office protective order to which counsel for AWM has been admitted. Our decision is based upon protected confidential information and is necessarily general.

with an unacceptably high risk. Offerors were also informed that price would be evaluated for "appropriateness"; balance between hardware, data, testing and other contract line items; and balance between basic and option quantity requirements.

By the May 26, 1992, closing date for receipt of proposals, the Navy received seven offers in response to the RFP, including those of AWM and ADCOR. The technical proposals were adjectivally evaluated by the source selection evaluation board (SSEB), which determined that ADCOR's and a third offeror's proposals were outstanding while AWM's proposal was unacceptable. Regarding ADCOR's proposal, the SSEB found that ADCOR had excellent fabrication experience with the government and a strong, established quality assurance program and had proposed highly educated key personnel and established facilities. Regarding AWM's proposal, the SSEB reported that while AWM offered highly experienced key personnel and described adequate facilities to perform the contract, AWM was a newly-formed company without contract experience or a currently functioning management organization, and AWM did not provide evidence that its proposed leased facilities had been secured.

One SSEB evaluator disagreed with the SSEB's majority findings regarding AWM and filed a minority statement that recommended that AWM's proposal be rated acceptable. Specifically, the minority evaluator, while agreeing that AWM was a newly-formed firm with no experience, believed that the experience of AWM's proposed team and its documented intent to lease the necessary facilities were sufficient to establish its proposal as acceptable.

In accordance with the agency's source selection plan, the SSEB's report and the minority evaluator's statement were provided to the source selection advisory council (SSAC) for its review. The SSAC reviewed the SSEB's evaluation worksheets and findings, as well as a price analysis of the price evaluation board (PEB), and requested information from the SSEB regarding the offerors' proposals. Regarding AWM's proposal, the SSAC sought information concerning AWM's stated intent to lease facilities. On August 13, the SSEB contacted the facilities identified in AWM's proposal concerning AWM's potential leases. On August 14, AWM submitted a package containing "additional data" to the agency concerning its proposed facilities. The Navy refused to consider this "late" information at that time.

The SSAC accepted the SSEB's evaluation of ADCOR's and the third offeror's proposals as outstanding but raised AWM's evaluation rating from unacceptable to marginal. The SSAC recommended to the source selection authority (SSA) that award be made without discussions to the third offeror,

asserting that the third offeror's proposal represented the best value to the government. The SSA, from his review of the SSAC's report, which included the SSEB's report and minority statement, decided that discussions were necessary, but that the competitive range be limited to ADCOR and the other outstanding offeror. The requisite business clearance was sought to limit discussions to the two offerors.² The Navy's approval of the business clearance memorandum was conditioned upon the SSA including 5 offerors, including AWM, in the competitive range, and the competitive range was so expanded by the SSA.

Discussions were conducted with the five offerors, including AWM. Both AWM and ADCOR received questions regarding their proposed prices, and AWM was also asked whether it had binding agreements with its key personnel and for its proposed facilities. Best and final offers (BAFO) and responses to the discussions questions were received and evaluated by the SSEB. The SSEB also evaluated AWM's August 14 submittal of information concerning its proposed facilities.

The SSEB again evaluated AWM's proposal as unacceptable and ADCOR's proposal as outstanding; the SSEB found that while AWM had adequately established the availability of its proposed facilities and that AWM had a functioning management organization, AWM was still a new business without company experience. The SSAC disagreed with the SSEB's evaluation assessment and found that while AWM was a new business, its proposal was acceptable. The SSAC evaluated ADCOR's proposal as outstanding, but with moderate risk because ADCOR significantly reduced its proposed price in its BAFO, thereby becoming the lowest priced offeror in the competitive range. The SSAC recommended to the SSA that award be made to ADCOR as representing the best value to the government. The SSA concurred with the SSAC's evaluation findings and recommendation. After receipt of the requisite business clearance, the Navy awarded a \$14.8 million contract to ADCOR. This protest followed.

AWM protests that the Navy's evaluation of AWM's proposal was unreasonable; specifically, AWM complains that the Navy assessed AWM's lack of company experience as a significant weakness to prevent AWM from receiving award. In this regard, AWM alleges that the Navy's evaluation was biased

²The Navy's acquisition regulations provide that negotiations cannot be conducted or award made prior to obtaining the approval of a business clearance memorandum by the appropriate Navy authority. See Wyle Laboratories, Inc.; Latecoere Int'l, Inc., 69 Comp. Gen. 648 (1990), 90-2 CPD ¶ 107.

against AWM because of AWM's efforts in having this procurement set-aside for SDB concerns. As evidence of this bias, AWM asserts, in addition to the Navy's alleged use of the company experience criterion to disqualify AWM, that the Navy refused to consider AWM's August 14 "clarification" information concerning its intended facilities and that the Navy did not conduct a pre-award survey of AWM in determining that AWM's offer did not represent the best value to the government.

In reviewing challenges to an agency's evaluation, we will not reevaluate proposals and independently judge their merits, but instead will review the record to consider whether the evaluation was reasonable and in accordance with the stated evaluation criteria. Abt Assocs. Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223.

Applying this standard here, we find that the Navy's evaluation of AWM's proposal was both reasonable and in accordance with the announced evaluation criteria. While AWM complains that it was disqualified from award because of its lack of company experience, the record shows that AWM's proposal was determined to be acceptable, despite having no company experience. In so finding, the SSAC and the SSA did not accept the SSEB's assessment of AWM's proposal as unacceptable because of the firm's lack of contract experience. Thus, while AWM cites the minority statement of one evaluator as evidence that the agency used the company experience criterion to disqualify AWM from award, the fact is that the SSAC and SSA essentially agreed with that evaluator's minority statement and found AWM's proposal acceptable, notwithstanding AWM's lack of company experience.

The agency's assessment of AWM's proposal as "acceptable" was consistent with the stated evaluation scheme, which provided that proposals that satisfied the solicitation requirements with a good probability of success would be evaluated as "acceptable" with moderate risk. In order to receive the higher "outstanding" evaluation rating under the stated adjectival evaluation plan, a proposal must exceed the solicitation requirements in a beneficial way. Since AWM does not assert that its proposal exceeded the solicitation requirements, we see no basis to question the agency's assessment of AWM's proposal as acceptable.

There is no merit to AWM's contention that the Navy's evaluation of AWM's proposal was biased. As noted above, AWM's proposal was found acceptable, despite having no company experience to evaluate. The fact that the SSEB believed AWM's proposal was unacceptable is irrelevant since, in the ultimate source selection, the SSA determined AWM to be acceptable. AWM's other "evidence" similarly does not show

any bias. For example, the Navy's refusal to consider AWM's clarification material that was received after the closing date for receipt of proposals and before discussions is irrelevant because the Navy considered this information in its final evaluation of the revised proposals. Also, the record shows that pre-award surveys were not requested as a part of the agency's technical evaluation, but to investigate the responsibility of the successful offeror. Not only is the record devoid of evidence of bias against AWM, but it shows that the basis for the agency's award to ADCOR, and not to AWM, was that ADCOR's technically superior and lower priced offer was more advantageous to the government.³

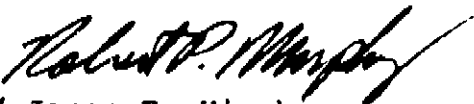
AWM also protests that ADCOR's low price is unrealistic since ADCOR significantly reduced its proposed price in its BAFO without any corresponding change in its technical approach. Despite having access under the General Accounting Office protective order to ADCOR's price proposal and the agency's detailed price evaluation documentation, AWM has provided no substantiation for this protest allegation other than noting that ADCOR's price is lower than AWM's. From our review of the documentation, we note that the agency performed a detailed review of ADCOR's prices for each contract line item and found ADCOR's pricing to be appropriate and reasonable, albeit low. The agency found that ADCOR's low BAFO price did not indicate a lack of technical understanding, given the firm's superior technical and management proposal. In addition, the agency, in its overall evaluation assessment, accounted for ADCOR's low proposed BAFO price by increasing ADCOR's proposal risk assessment from low risk to moderate risk. Under the circumstances, we find that the agency properly evaluated ADCOR's proposed price. See Family Realty, B-247772, July 6, 1992, 92-2 CPD ¶ 6 (agency's price analysis was proper where it determined that the low price reflected the offeror's approach and was reasonable).

AWM also protests that the fact that ADCOR significantly lowered its proposed price in its BAFO "indicates that an impermissible auction was taking place." This allegation is without merit. The record contains no evidence that the offerors' pricing or relative price standing was disclosed or that the agency conducted an auction. AWM's only "evidence" for this allegation is that ADCOR lowered its price in response to the agency's request for BAFOs. This is not evidence that an auction occurred; it is not uncommon

³AWM does not challenge the technical evaluation of ADCOR's proposal, even though it was provided that proposal under the protective order. From our review, it appears that the Navy's ratings of ADCOR as outstanding and AWM as acceptable were reasonable.

for offerors to lower their prices in the later stages of negotiation. See Bromma, Inc., 66 Comp. Gen. 433 (1987), 87-1 CPD ¶ 480.

The protest is denied.


James F. Hinchman
General Counsel